

Message Text

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ACTION NEA-10

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TO SECSTATE WASHDC PRIORITY 1520

INFO AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

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E.O. 11652: N/A

TAGS: USINJC, IN

SUBJECT: INDO-U.S. JOINT COMMISSION MEETING

REF: STATE 218075

1. WE HAVE BEEN MAKING A CONCERTED EFFORT TO IDENTIFY AND AMELIORATE SOME OF THE DIFFICULTIES AMERICAN FIRMS EXPERIENCE IN CONDUCTING BUSINESS OPERATIONS IN INDIA. ORGANIZATIONS SUCH AS THE ASSOCIATED CHAMBER OF COMMERCE, THE INDO-GERMAN CHAMBER OF COMMERCE AND THE INDO-AMERICAN CHAMBER OF COMMERCE ARE MAKING SIMILAR EFFORTS FOR THEIR OWN MEMBERS. THE RECENT APPROVAL OF THE UNION CARBIDE APPLICATION FOR A NEW INVESTMENT AND RELAXATION IN SOME OF THE FERA GUIDELINES (I.E. FIRMS ARE NOW PERMITTED TO ISSUE BONUS SHARES IN EXCESS OF THE PREVIOUS 1:1 RATIO) INDICATE THAT THE GOI IS WILLING TO INTRODUCE A DEGREE OF FLEXIBILITY INTO WHAT WERE RIGID POSITIONS AND INTERPRETATIONS OF THE FERA GUIDELINES. IT IS IMPORTANT, IN FACT, ESSENTIAL THAT THE CLIMATE FOR EXISTING FOREIGN INVESTMENT IN INDIA BE SUBSTANTIALLY IMPROVED BEFORE ANY MEANINGFUL EFFORT CAN BE MADE TO PROMOTE ADDITIONAL FOREIGN

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INVESTMENT IN THIS COUNTRY.

2. THE COMMISSION MEETING PROVIDES AN EXCELLENT OPPORTUNITY TO MAKE THIS POINT. WE STRONGLY URGE THAT THIS BE A MAJOR FOCUS IN THE DISCUSSIONS OF ECONOMIC MATTERS SUCH AS THOSE BETWEEN ENDERS AND M.G. KAUL. FAILURE TO ACKNOWLEDGE THIS ISSUE WOULD BE A SET-BACK TO OUR EFFORTS HERE TO IMPROVE THE LOT OF AMERICAN BUSINESS.

3. ACCORDINGLY WE HAVE COMPILED THE FOLLOWING BRIEF SYNOPSIS OF THE MAJOR PROBLEMS AND INVESTMENT CASES ON WHICH WE WOULD LIKE THE GOI TO SHOW SOME PROGRESS. THE PROBLEMS RELATE PRIMARILY TO THE RATHER ARBITRARY MANNER OF THE IMPLEMENTATION OF THE FERA BUT WE HAVE INCLUDED OTHER OPERATING PROBLEMS. THIS INFORMATION COMES FROM AN EFFORT ON THE PART OF THE INDO-AMERICAN CHAMBER TO CATALOG THE ISSUES AS WELL AS FROM OUR OWN CONVERSATIONS WITH REPRESENTATIVES OF AMERICAN FIRMS. WHILE IT HAS ALREADY BEEN COMMUNICATED TO M.G. DAUL, SECRETARY, MINISTRY OF FINANCE, WASHINGTON REITERATION OF USG INTEREST WOULD IN OUR OPINION BE VERY VALUABLE.

4. FERA IMPLEMENTATION LETTERS. COMPANIES ARE RECEIVING LETTERS FROM THE RESERVE BANK OF INDIA INSTRUCTING THEM TO DISINVEST OR DILUTE THEIR FOREIGN CAPITAL WITHIN ONE YEAR OR, IN SOME CASES, WITHIN TWO YEARS. THEY ARE REQUIRED TO SUBMIT TO THE RBI WITHIN THREE MONTHS A DETAILED PLAN FOR THE REDUCTION IN THEIR FOREIGN EQUITY. IF THEY ARE TO MAKE A COUNTER PROPOSAL, THEY ARE GIVEN ONLY 30 DAYS TO DO SO. IT IS PRACTICALLY IMPOSSIBLE TO IMPLEMENT THESE ACTIONS IN THE SPECIFIED PERIOD. COMPANIES WHICH ARE TO DILUTE THEIR FOREIGN EQUITY INTERESTS REGARD ONE YEAR AS TOO SHORT A TIME TO DISPOSE OF ALL ADDITIONAL SHARES IN THE CAPITAL MARKET. THIS, THEY FEEL, WILL NOT PERMIT AN EQUITABLE VALUE TO BE RECEIVED FOR THE FOREIGN INTEREST. FURTHER, 30 DAYS IS TOO SHORT A PERIOD FOR THE COMPANIES TO DRAW UP A VIABLE COUNTER PROPOSAL. FLEXIBILITY AND A DEGREE OF REALISM SHOULD BE INTRODUCED INTO THE DILUTION/DISINVESTMENT PROCEDURES.

5. CRITERIA FOR FOREIGN EQUITY OWNERSHIP. THE REQUIREMENT THAT A FIRM MUST EXPORT 60 PERCENT OF ITS TOTAL PRODUCTION OR MANUFACTURE CORE SECTOR PRODUCTS IN ORDER TO BE CONSIDERED FOR A 74 PERCENT FOREIGN INTEREST IN UNDULY RESTRICTIVE. LARGE COM-LIMITED OFFICIAL USE

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PANIES EXPORT SUBSTANTIAL AMOUNTS BUT THE TOTAL VALUE MAY BE LESS THAN 60 PERCENT. A FIRM MAY ALSO MANUFACTURE SOPHISTICATED PRODUCTS, ONLY SOME OF WHICH FALL IN THE "CORE" SECTOR. FIRMS SHOULD BE GIVEN A REASONABLE TIME/PERIOD TO BUILD-UP EXPORTS OR TO MOVE INTO "CORE" SECTOR PRODUCTION. A FLEXIBLE APPROACH TO THE PERCENTAGE OF FOREIGN EQUITY ALLOWED AND EXPORT PRODUCTION REQUIRED SHOULD BE ADOPTED.

6. EMPLOYMENT OF FOREIGN TECHNICIANS. FOREIGN FIRMS ARE BEING INHIBITED FROM BRINGING INTO INDIA TECHNICIANS REQUIRED TO INSTALL NEW MACHINERY AND TO TRAIN LOCAL PERSONNEL. EVEN THREE MONTHS VISAS FOR FOREIGN TECHNICIANS ARE BEING DENIED. EACH JOINT VENTURE IS NOW REQUIRED TO SPEND MONTHS NEGOTIATING FOR PERMISSION TO BRING IN FOREIGN SPECIALIZED TECHNICIANS AND CONFUSION EXISTS AS TO HOW LONG THEY WILL BE EXEMPTED FROM INDIAN INCOME-TAX.

7. LOAN CONVERSIONS. IT IS REQUIRED THAT 20 PERCENT OF LOANS PROVIDED BY PUBLIC FINANCIAL INSTITUTIONS BE CONVERTIBLE INTO SHARES AT THE OPTION OF THE LENDER. IN CASES IN WHICH FOREIGN INVESTMENT IS 10 PERCENT, THE FOREIGN INVESTOR IS FACED WITH THE POSSIBILITY OF HAVING HIS EQUITY FURTHER DILUTED, IF THE INSTITUTION EXERCISES ITS OPTION. THE POSSIBILITY OF LOAN CONVERSION SHOULD BE TAKEN INTO ACCOUNT WHEN THE EQUITY INVESTMENT OF THE FOREIGN PARTNER IS INITIALLY SET OR THE FOREIGN PARTNER SHOULD BE GIVEN THE OPTION TO INVEST NEW CAPITAL AT THE TIME OF CONVERSION TO BRING ITS HOLDINGS UPTO 40 PERCENT.

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8. ROYALTY RATES. US CORPORATIONS CONTEMPLATING TECHNOLOGY

TRANSFERS HAVE DROPPED NEGOTIATIONS BECAUSE EXISTING RATES FOR THE DISCLOSURE OF TECHNICAL KNOW-HOW ARE UNREALISTICALLY LOW. THE SHORT TIME PERIOD (5/7 YEARS) AND THE REQUIREMENT THAT CERTAIN TRANSFERS BE CHANNELIZED THROUGH GOI AGENCIES MAKES TECHNICAL TRANSFER UNATTRACTIVE FROM THE FOREIGN LICENSORS POINT OF VIEW. THE ALLOWANCE FOR EXPENSES ON ROYALTY INCOME IS ALSO VERY DISCRETIONARY. FIRMS NEGOTIATING ROYALTY AGREEMENTS DO NOT KNOW THEIR EXACT ROYALTY INCOMES UNTIL THE INDIAN INCOME-TAX AUTHORITIES HAVE DETERMINED ALLOWABLE EXPENSES AFTER THEY FILE THEIR INCOME-TAX RETURNS ON THE FIRST YEAR'S OPERATIONS.

9. NATIONAL STARCH COMPANY. THE AMERICAN COMPANY AND ANIL STARCH OF AHMEDABAD APPLIED TO THE GOVERNMENT TO ESTABLISH A JOINT VENTURE TWO YEARS AGO. NATIONAL STARCH WOULD HAVE 40 PERCENT OF THE EQUITY. AFTER PROTRACTED NEGOTIATIONS WITH THE MINISTRY OF COMMERCE, IT RELUCTANTLY AGREED TO ACCEPT AN EXPORT COMMITMENT OF PERCENT. NOW AFTER DETAILED REVIEW, THE MINISTRY OF LAW AND COMPANY AFFAIRS HAS SAID THAT THE PROPOSAL MAY BE APPROVED ONLY IF 60 PERCENT OR MORE OF THE PRODUCTION IS EXPORTED. THE ADDITIONAL LIMITED OFFICIAL USE

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AL EXPORT REQUIREMENT WOULD APPEAR TO FALL OUTSIDE THE FERA GUIDELINES AND THE APPLICATION SHOULD BE APPROVED WITH ONLY 40 PERCENT EXPORT COMMITMENT.

10. INGERSOLL-RAND. THE COMPANY HAS APPLICATIONS BEFORE THE LICENSING COMMITTEE FOR THE EXPANSION OF ITS EXISTING PRODUCTION CAPACITY FOR COMPRESSORS AND MUCH-NEEDED WATER WELL DRILLING RIGS SOME OF WHICH PRE-DATE THE FERA. THE LICENSING COMMITTEE REPORTEDLY HAS DEFERRED CONSIDERATION OF THE APPLICATIONS UNTIL THE COMPANY DILUTES UNDER FERA. THE APPLICATIONS PROVIDE FOR SUBSTANTIAL EXPORTS FROM INDIA AS A RESULT OF THE EXTRA CAPACITY THAT SHALL BE CREATED AND SHOULD BE APPROVED.

11. ABBOTT LABORATORIES INDIA PRIVATE LIMITED. THE COMPANY RECEIVED VERBAL ASSURANCES FROM THE MINISTRY OF PETROLEUM AND CHEMICALS SEVERAL MONTHS AGO THAT THEIR LICENSE FOR THE ESTABLISHMENT OF A NEW PLANT WILL BE GRANTED. OFFICIAL NOTIFICATION SHOULD BE GIVEN BY THE RBI TO THE COMPANY.

12. LUDLOW JUTE COMPANY LIMITED. THE COMPANY IS A 100 PERCENT EXPORT ORIENTED MANUFACTURER OF JUTE PRODUCTS WHICH HAS BEEN UNABLE TO OBTAIN A DEFINITIVE STATEMENT ON ITS EQUITY STATUS UNDER FERA. AS A 100 PERCENT EXPORTER IT IS LEGALLY ENTITLED TO CONTINUE AS A 100 PERCENT US OWNED CORPORATION AND SHOULD BE GRANTED THIS STATUS TO REMOVE ITS UNCERTAINTY ABOUT THE FUTURE.

13. HELENE CURTIS. THE COMPANY ESTABLISHED A JOINT VENTURE WITH J.K. ORGANIZATION IN 1963. THE JOINT VENTURE COMPANY FAILED TO OBTAIN COB LICENSE IN 1970 AND IS NOW BEING ADVISED THAT IT WILL

BE DENIED PERMISSION TO CONTINUE ITS ACTIVITIES UNDER SECTION 29 OF FERA. THE DRASTIC ACTION BEING CONTEMPLATED DOES NOT FIT THE CRIME.

14. DORR-OLIVER INDIA LIMITED. THE COMPANY IS 100 PERCENT FOREIGN OWNED AND IT HAS BEEN OPERATING IN INDIA FOR OVER 25 YEARS. IT PROVIDES ENGINEERING AND CONSULTANCY SERVICES IN HIGH TECHNOLOGICAL AREAS. THE COMPANY HAS INDICATED THAT IT WILL ACCEPT DILUTION TO 66 PERCENT FOREIGN PARTICIPATION. HOWEVER, IT IS ALSO BEING REQUIRED TO ESTABLISH A NEW PUBLIC LIMITED COMPANY AND ITS BUSINESS ACTIVITIES ARE BEING RESTRICTED TO SPECIFIC AREAS. THE CONDITIONS WOULD APPEAR TO BE DISCRIMINATORY AND ILLEGAL.
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